

PROPOSED AMENDMENTS  
TO THE  
CALIFORNIA CODE OF REGULATIONS  
**TITLE 23, STATE WATER RESOURCES CONTROL BOARD**  
**SECTIONS 2713, 2717-2717.7, LAWS GOVERNING RED TAGS**

# **NOTICE OF PROPOSED RULEMAKING**

JULY 4, 2003

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

## **NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

### **PROPOSED REGULATORY ACTION**

The State Board proposes to amend Section 2713 and adopt Sections 2717, 2717.1, 2717.2, 2717.3, 2717.4, 2717.5 and 2717.6 in Chapter 16 of Division 3 of Title 23 of the California Code of Regulations (CCR). These sections concern red tags and underground storage tanks.

### **PUBLIC HEARING**

The State Board will hold a public hearing on the proposed regulations at 10:00 a.m. on August 26, 2003 in the Sierra Hearing Room at the California Environmental Protection Agency Headquarters Building, 1001 "I" Street, Sacramento, California. At the public hearing, any person may present statements or arguments that are relevant to the proposed regulations described in the informative digest, either orally, or in writing. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the State Board. The State Board will consider written comments not presented at the public hearing if they are received prior to the close of the written comment period.

Persons who wish to speak at the public hearing are requested to register prior to the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Reasonable accommodation or sign language services at the public hearing will be provided upon request. Such request should be made no later than 15 days prior to the public hearing.

### **WRITTEN COMMENT PERIOD**

Any person may submit written comments relevant to the proposed regulatory action to the State Board. The written comment period closes at **5:00 p.m. on August 26, 2003**. The State Board will only consider written comments received by that time. Submit comments to:

David Boyers  
Office of Chief Counsel  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Telephone: (916) 341-5182

Comments may also be hand-delivered to 1001 I Street, 22<sup>nd</sup> Floor, Sacramento, CA 95814, or e-mailed to: [Dboyers@exec.swrcb.ca.gov](mailto:Dboyers@exec.swrcb.ca.gov) or faxed to (916) 341-5199.

To be added to the mailing list for this rulemaking, and to receive notification of updates of this rulemaking, please send your name and address to Deanna Flanagan at the State Water Resources Control Board, Division of Water Quality, P.O. Box 944212, Sacramento, California 94244-2120. Individuals who receive this notice by mail are already on the mailing list.

### **AUTHORITY AND REFERENCE**

Sections 25292.3, 25299.3, and 25299.7 of the Health and Safety Code authorize the State Board to adopt the proposed regulations, which would implement, interpret, or make specific the following State statute: Health and Safety Code Section 25292.3.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Health and Safety Code Section 25292.3 allows local agencies to prohibit fuel delivery to an underground storage tank (UST) system found to have one or more “significant violations” by affixing a red tag to the system’s fill pipe. If the significant violation poses an imminent threat to human health, safety, or the environment, the local agency may affix the red tag immediately upon discovery of the violation. (Health & Saf. Code, § 25292.3, subd. (a).) If the significant violation does not pose such a threat, the local agency must first notify the owner or operator, giving the owner or operator seven days to correct the violation before it may affix a red tag to the fill pipe. (*Id.* § 25292.3, subd. (b).) After the owner or operator of a red-tagged UST system corrects the violation and notifies the local agency, the agency must inspect the UST system within five days to determine whether it continues to be in significant violation. (*Id.* § 25292.3, subd. (f).) If the local agency determines that the system has been corrected, it must immediately remove the red tag. (*Ibid.*) Section 25292.3 requires that the State Board adopt regulations to define what constitutes a “significant violation.” (*Id.* § 25292.3, subd. (g).)

Section 2713 currently requires that local agencies transmit to the State Board, on a quarterly basis, certain information pertaining to its UST implementation and enforcement activities. The proposed regulation clarifies that, as part of its reporting of enforcement activities, local agencies shall submit certain information regarding UST systems in their jurisdiction that have received a red tag.

Section 2717 defines the terms “significant violation” and “imminent threat to human health or safety or the environment.”

Section 2717.1 specifies the circumstances under which a local agency may affix a red tag to a UST system with one or more significant violations and provides that local agencies shall use a tamper-resistant strap or straps, fill pipe bag, or any combination thereof, to affix a red tag to the fill pipe of a noncompliant UST system. Section 2717.1 also requires that a local agency determine the level of stored product in the tank prior to affixing a red tag and specifies that the State Board shall provide red tags, tamper-resistant straps, and fill pipe bags to local agencies upon request.

Section 2717.2 reiterates for purposes of clarity the statutory requirement that a local agency, after receiving notice from an owner or operator that a significant violation has been corrected, inspect the system within five days to determine whether the violation has been corrected. This section also gives local agencies authority to provide written authorization allowing an owner or operator to remove a red tag prior to the local agency’s inspection if the owner or operator documents to the satisfaction of the local agency that the significant violation has been corrected. This section provides that the local agency or the owner or operator, depending on who removes a red tag, shall determine the level of stored product in the tank after removing the red tag, and requires that an owner or operator who removes a red tag pursuant to written authorization by the local agency shall return the tag to the local agency within five business days, or sooner if requested by the local agency.

Section 2717.3 provides that a local agency may remove or authorize the removal of a red tag from an emergency generator tank system prior to the significant violation being corrected if the local agency determines that an emergency situation exists requiring operation of the system and the delivery of petroleum is necessary for the continued operation of the system during the emergency.

Section 2717.4 provides that, after making a determination that a significant violation has been corrected, the local agency shall provide written notice to the owner or operator of its determination.

Section 2717.5 creates an exemption from the authority for a local agency to affix a red tag for a UST system component found to be in significant violation if the violation is discovered during periodic testing of the component. The exemption would not apply if: (1) the violation poses an imminent threat to human health or safety or the environment; (2) there is evidence the component in violation has been tampered with; or (3) the owner or operator fails to take appropriate action to correct the violation.

Section 2717.6 describes in detail the appearance of a red tag.

Section 2717.7 provides that affixing a red tag to the fill pipe of a UST system found to have one or more significant violations does not prohibit the local agency, State Board, a regional water quality control board, or any other prosecuting agency from taking additional actions.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The State Board has made the following determinations:*

- Mandate on local agencies and school districts: No new mandate to local agencies or schools is proposed. Any mandate to local agencies or schools is the result of the statute and not the regulations per se.
- Costs or savings to any State agency: The State Board expects it will expend approximately fifty thousand dollars (\$50,000) to contract for the production of red tags, tamper-resistant straps, and fill pipe bags. It is anticipated that the State Board will be able to absorb these costs within its existing budget and resources.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in Federal funding to the State: None.
- Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on private persons or directly affected businesses: None.
- Adoption of this amendment will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Significant effect on housing costs: None.

### **SMALL BUSINESS DETERMINATION**

The State Board has determined that the proposed regulatory action does not affect small businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5, subdivision (a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at any hearing that may be requested or during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the substance of the proposed action may be directed to:

David Boyers  
Office of Chief Counsel  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Telephone: (916) 341-5182  
E-mail address: [Dboyers@exec.swrcb.ca.gov](mailto:Dboyers@exec.swrcb.ca.gov)

You may also direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Boyers at the above address. In the event that Mr. Boyers is not available to respond to inquiries, please contact:

Leslie Alford  
Underground Storage Tank Enforcement Unit  
State Water Resources Control Board  
P.O. Box 944212  
Sacramento, CA 94244-2120  
Telephone: (916) 341-5810  
E-mail address: [alfordl@cwpswrcb.ca.gov](mailto:alfordl@cwpswrcb.ca.gov)

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS/INTERNET ACCESS**

An initial statement of reasons and the text of the proposed regulations have been prepared and are available from the contact person named in this notice. The State Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial

Statement of Reasons. The documents relating to this proposed action may be found on the State Board's UST website at the following address:

<http://www.swrcb.ca.gov/ust/>

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After any hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with changes clearly indicated—available to the public for comment for at least 15 days before the State Board adopts the regulation as revised. Any such modifications will also be posted on the State Board's UST website. Please send requests for copies of any modified regulation to the attention of David Boyers at the address indicated above. The State Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

#### **AVAILABILITY OF STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.